

# State legislators seek to curtail local regulation of oil and gas drilling



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Throughout the American southwest, state legislators are waging a battle for control over the oil and gas industry. After decades of sharing control with local governments – many of which regulate oil and gas drilling within their boundaries – state legislators in New Mexico, Oklahoma, and Texas are now seeking to curtail local regulation. To this end, they have proposed new legislation giving the state primary regulatory authority over oil and gas operations and severely limiting the authority of local government.

The origins of this legislative attack can be traced back to 2013. In April of that year, Mora County in northeastern New Mexico became the first in the nation to [ban oil and gas drilling](#) within its borders. While the ban was later [repealed](#) (after being ruled [unconstitutional](#) by a federal court), many in New Mexico remain concerned about local restrictions on oil and gas drilling. Responding to these concerns, in March, the New Mexico House of Representatives passed [House Bill 366](#) declaring that “[t]he state has exclusive jurisdiction and authority over all matters relating to oil and gas conservation, extraction, production, processing, storage and transportation.” Despite receiving fairly strong support in the House – passing with nearly sixty percent of the vote – the bill seems unlikely to pass the Senate. On March 3, the Senate Conservation Committee postponed consideration of the bill indefinitely.

Legislative efforts to curtail local regulation of oil and gas drilling have met with greater success in Oklahoma. Both chambers of the Oklahoma Legislature recently passed [bills](#) assigning primary regulatory authority over oil and gas operations to the state. Under the bills, local governments may only adopt “reasonable...regulations concerning road use, traffic, noise, and odors incidental to oil and gas operations” and “reasonable setbacks and fencing requirements for oil and gas well sites.” Notably however, any local setback requirements must be reasonably necessary to protect public health, safety, and welfare and must not effectively prohibit oil and gas operations.

Setbacks, requiring oil and gas wells to be located a minimum distance away from occupied structures, have become increasingly common in recent years. Some of the toughest requirements are here in Texas. The city of Dallas for example, requires oil and gas wells to be at least 1,500 feet from homes, schools, churches, and other protected sites. This means that each new well site must be surrounded by a clear buffer zone of approximately 162 acres. That is an area equivalent in size to 125 football fields.

This and other setback requirements have been supported by [environmental groups](#) concerned about the impact of oil and gas drilling on local communities. On the other side of the debate are industry bodies which view the setbacks as unduly restrictive. [Industry participants](#) have, for example, argued that Dallas’ 1,500 foot setback requirement operates as a de facto ban on drilling within the city limits. Industry has also strongly opposed a [ban](#) on hydraulic fracturing passed by voters in Denton in November 2014.

Responding to industry concerns, on March 10, Rep. Drew Darby proposed [House Bill 40](#) which would limit the ability of Dallas, Denton, and other local municipalities to regulate oil and gas drilling. An [amended version of the bill](#) was passed by the House of Representatives (125 votes to 20) on April 20 and by the Senate (24 votes to 7) on May 4.

House Bill 40 (as amended) affirms that the state, through the Texas Railroad Commission, has exclusive jurisdiction over oil and gas development. The bill expressly preempts local regulation of oil and gas development except in limited circumstances. Under the bill, local governments can only regulate surface activities incidental to oil or gas operations, such as emergency response, traffic, lights, and noise. The local regulations must be commercially reasonable and must not effectively prohibit oil and gas operations or be otherwise preempted by state or federal law. For a local regulation to be considered “commercially reasonable,” it must allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas. A regulation is prima facie commercially reasonable if it has been in effect for at least five years and has allowed oil and gas operations to continue during that period.

Supporters argue that, by allowing commercially reasonable regulation of surface activities, House Bill 40 preserves local governments’ ability to regulate operations affecting their citizens. Others, however, have expressed concern that the bill may have a chilling effect on local regulation. This is because the bill provides little guidance on what constitutes acceptable local regulation of oil and gas operations. Faced with this uncertainty, some local governments may elect not to exercise regulatory authority. Those that do could see their regulations challenged in court. Indeed, the current setback requirements in Dallas and other cities are likely to be subject to litigation if House Bill 40 is enacted.

These risks were emphasized by community and environmental groups last week at a hearing of the [Senate Natural Resources and Economic Development Committee](#). The Committee members did not, however, agree with these groups’ concerns and voted unanimously to send House Bill 40 to the Senate floor. Yesterday, the Senate passed House Bill 40 without amendments. Now, all that is required for the bill to become law is the signature of Governor Greg Abbot. After the Governor’s office, the next stop for both supporters and opponents of the bill may well be the courts.



Dallas



Denton



energy



fracking



House Bill 40



local control



New Mexico



oil and gas



Oklahoma



Texas

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